HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO :34464 of 1998

Dated 6th June, 2007

Between

Tirunagar Anjaiah and ors

…Petitioners

and

Govt. of AP, rep. By its Principal Secretary,
Revenue (Endowments-II) Department, Secretariat,
AP, Hyderabad, and, ors.

…Respondents.

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 34464 of 1998

ORDER:

This Writ Petition is filed questioning the auction notice dated 2-12-1998 issued by the third respondent-Single trustee of Sri Peramamba Dharmasala, situated in Miryalaguda, Nalgonda District.

Peramamba Dharmasala, Miryalaguda, was originally constructed by late Smt. Peramamba. She had purchased an extent of Ac.0.04 guntas covered by Sy.No. 864 of Miryalaguda town and structures were raised. She died leaving one son, by name, Sri Chennaiah and the petitioners herein are the sons of said Chennaiah. It is the case of the petitioners that late Peramamba had endowed only an extent of Ac.0.02 guntas of land and remaining Ac.0.02 gunutas was bequeathed by Will dated 13-4-1960 in favour of Chennaiah, who

is the father of the petitioners. The impugned notice is issued inviting bids for construction of shops on the entire extent of Ac.0.04 guntas of land.

It is the grievance of the petitioners that as much as the petitioners belong to members of the founder family and they derived title to the extent of Ac.0.02 guntas of land out of Ac.0.04 guntas through their father in whose favour the said extent of Ac.0.02 guntas was bequeathed by way of Will from the original owner, late Smt. Peramamba, the impugned notice issued by the third respondent for raising structures on the entire Ac.0.04 guntas of land is illegal and arbitrary.

At the stage of admission, this Court has granted interim order on 11-12-1998.

No counter affidavit is filed on behalf of the respondents 1 and 2. However, Counter affidavit is filed by the third respondent. While generally denying the allegations of the petitioners, it is stated in the counter affidavit that if the petitioners claim to be the members of the founder family, it is for them to file an application before the competent authority under the provisions of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987.

Learned Counsel for the petitioners has filed a copy of the order dated 24-2-2004 in O.A.No. 202 of 1998 passed by the Deputy Commissioner, as confirmed by the Commissioner, Endowments, by order dated 29-11-2006 in proceedings Rc.No. F2/9427/2005. It appears, subsequent to the filing of the Writ Petition, the petitioners have filed an application under Section 45 read with Section 87 of the

A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 to declare that the site to the extent of Ac.0.02 guntas forming part of Ac.02.34 guntas in Sy.No. 864 of Miryalaguda is not charitable endowment and does not form part of property of Sri Thirunagar Peramamba Dharmasala and the said site is personal property of the petitioners. The Deputy Commissioner, Endowments by order dated 24-2-2002 declared that the land to the extent of Ac.00.02 guntas situated on the South East part of the total land of Ac.00.04 Gts was set apart by late Smt. Peramamba for her exclusive use and she has not endowed the same to the Dharmashala. Further, direction was issued to the Assistant Commissioner to obtain fresh application under Section 43 (10) of the A.P. Charitable and Hindu Religious Institutions & Endowments Act 30 of 1987 from the present Executive Authorities of the Dharmashala showing in Column No. 8 of the register maintained under Section 43 of the Act. The said order is also confirmed by the Commissioner, Endowments by order dated 29-11-2006 in proceedings Rc.No.F2/9427/2005.

Though impugned auction notice inviting bids for construction of shops in the entire Ac.0.04 guntas of land was issued, but however, it is now declared by the competent authority under the provisions of the Act 30 of 1987 that land admeasuring Ac.00.02 guntas out of Ac.0.04 guntas belongs to the original owner and the same is not endowed to Sri Thirunagar Peramamba Dharmasala, Miryalaguda, and, the said order is also confirmed by the Commissioner, Endowments, as required under Section 87(5) of the Act. In view of the orders of the Deputy Commissioner, as confirmed by the Commissioner, Endowments, the impugned auction notice is liable to be set aside. Accordingly the impugned notice dated 2-12-1998 is set aside.

However, it is made clear that it is open for the institution to take steps for developing the property by raising structures in the extent of the land, which is endowed to Dharmasala.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 06-06-2007.
Msnr.